

E-JJ (CRUNEC Notice, V.4)

EXHIBIT E-JJ

Announcement Date: April 30, 2003
Proposed Effective Date: June 16, 2003

Document Number: PROS.04.30.03.F.01071.CRUNEC
Notification Category: Process Notification
Target Audience:

- CLEC, Resellers

Subject: CMP - Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC) V4.0

Level of Change: Level 3
Associated CR Number or System Release Number: Not Applicable

Summary of Change:

On April 30, 2003, Qwest will post planned updates to its Wholesale Product Catalog that include new/revised documentation for Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC) V4.0. These will be posted to the Qwest Wholesale Document Review Site located at <http://www.qwest.com/wholesale/cmp/review.html>

Qwest is modifying/changing the existing manual process by removing conditioning as a limiting factor of the CRUNEC process as it relates to DS1 Capable Loops when facilities are not available.

Current operational documentation for this product or business procedure is found on the Qwest Wholesale Web Site at this URL <http://www.qwest.com/wholesale/clecs/crunec.html>.

Comment Cycle:

CLEC customers are encouraged to review these proposed changes and provide comment at any time during the 15-day comment review period. Qwest will have up to 15 days following the close of the comment review to respond to any CLEC comments. This response will be included as part of the final notification. Qwest will not implement the change sooner than 15 days following the final notification.

Qwest provides an electronic means for CLEC customers to comment on proposed changes. The Document Review Web Site provides a list of all documents that are in the review stage, the process for CLECs to use to comment on documents, the submit comment link, and links to current documentation and past review documents. The Document Review Web Site is found at <http://www.qwest.com/wholesale/cmp/review.html>. Fill in all required fields and be sure to reference the Notification Number listed above.

Timeline:

Planned Updates Posted to Document Review Site	Available April 30, 2003
CLEC Comment Cycle on Documentation Begins	Beginning May 1, 2003
CLEC Comment Cycle Ends	5.00 PM, MT May 15, 2003
Qwest Response to CLEC Comments (if applicable)	Available May 30, 2003 http://www.qwest.com/wholesale/cmp/review_archive.html

Proposed Effective Date	June 16, 2003
-------------------------	---------------

If you have any questions on this subject, please submit comments through the following link
<http://www.qwest.com/wholesale/cmp/comment.html>

Sincerely,

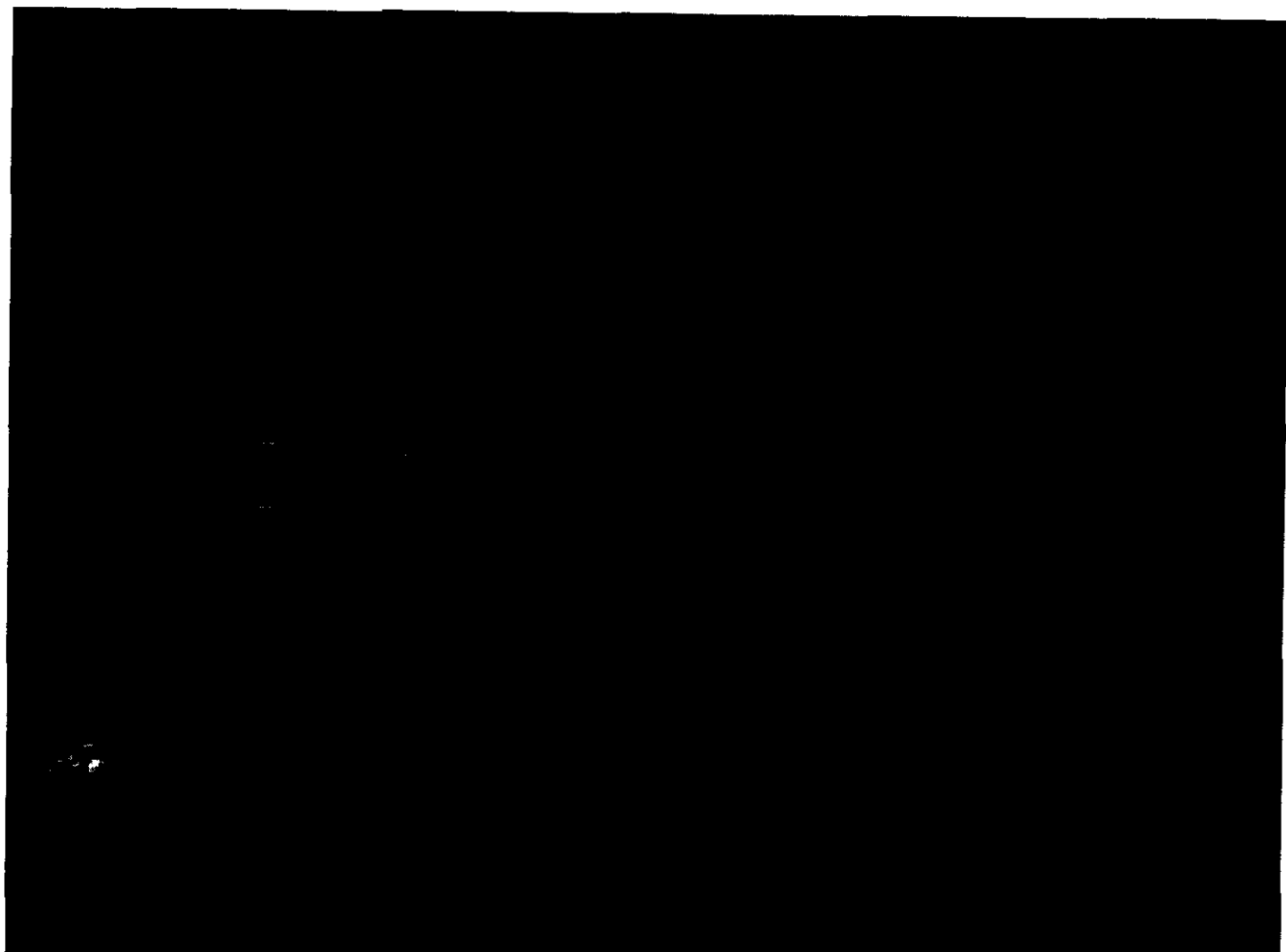
Qwest

E-KK (Example One Chronology)

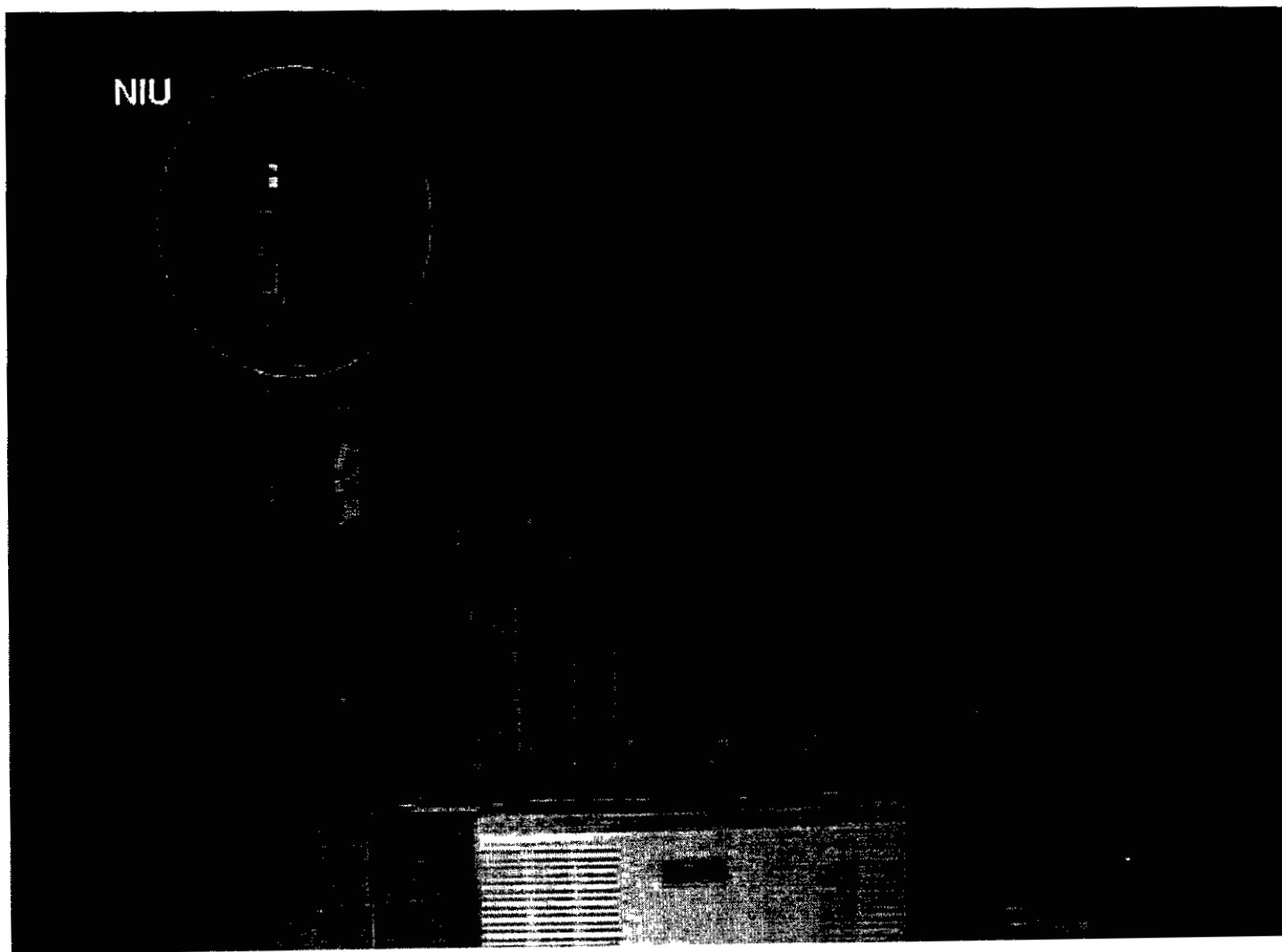
EXHIBIT KK EXAMPLE ONE CHRONOLOGY

- Eschelon submitted PON UT293998T1FAC - LSRC ID (local service request ID) 7097727 to Qwest on 6/5/03 and requested a due date of 6/16/03 to install a DS1 capable loop
- Qwest sent Eschelon a LSRC (local service request confirmation) on 6/6/03 (1:22 PM). The LSRC contained
 - 1 Qwest order number N21251158
 - 2 Qwest's provided ECCKT (circuit ID) of **69HCFU001599MS**.
 - 3 Qwest confirmed Eschelon's requested due date of 6/16/03 on the LSRC
- Qwest sent Eschelon jeopardy notices on 6/11/03 (6:02 PM) and 6/13/03 (9:30 AM). The jeopardy notices both stated "Local Facility Defective" and the jeopardy notices contained no estimated due date
- Qwest sent a LSRC on 6/13/03 (5:27 PM) Remarks on the LSRC state "Delayed order released and will make 6/16/03 due date"
- Qwest sent a Eschelon a jeopardy notice on 6/17/03 (1:13 PM) The jeopardy notice stated "Local Facility Defective" and the jeopardy notices contained no estimated due date
- Qwest sent Eschelon a LSRC on 6/26/03 (6 56 PM) Remarks on the LSRC state "Order is released with 6/30/03 recommit date"
- Qwest sent a Eschelon a jeopardy notice on 6/30/03 (10:23 AM) The jeopardy notice stated "Local Facility Defective" and the jeopardy notices contained no estimated due date
- Qwest sent Eschelon a LSRC on 7/2/03 (3:34 PM) Remarks on the LSRC state "Order is released with 7/8/03 recommit date".
- Qwest sent a Eschelon a jeopardy notice on 7/9/03 (10:19 AM) The jeopardy notice stated "Local Facility Defective" and the jeopardy notices contained no estimated due date.
- Qwest sent Eschelon a LSRC on 7/16/03 (11 20 AM). Remarks on the LSRC state "Order is released with 7/21/03 recommit date".
- Qwest sent a Eschelon a jeopardy notice on 7/22/03 (1:20 PM) The jeopardy notice stated "Local Facility Defective" and the jeopardy notices contained no estimated due date. *Comments read "Service Inquiry-no qualified facilities available".*
- Because Eschelon had received a LSRC with a committed due date of 7/21/03 previously, Eschelon had scheduled a technician dispatch for 7/23/03 Due to the shortness of time between notices, Eschelon had not stopped its internal process and canceled the dispatch by the Eschelon technician. Therefore, Eschelon dispatched a technician to the customer location on 7/23/03 (12:00 PM local time). The Eschelon technician found the circuit installed and tagged with the circuit ID at the customer premise Circuit ID is the same (**69HCFU001599MS**) as on the LSRC. Because the Eschelon technician did not know the order was held, the technician performed routine procedures (test calls, surfing, etc) to ensure the circuit was working for voice and data.
- On 7/23/03, while at the customer premise, the Eschelon technician followed routine procedures and called Eschelon to close out the order Only then did the Eschelon technician learn that, according to Qwest, no facilities were available, when in fact the facility was installed and working.

E-LL (Photo of Circuit ID#)



Ex. MM (Photo of NIU)



Ex. NN (Example Two Chronology)

EXHIBIT NN
EXAMPLE TWO CHRONOLOGY

- Eschelon submitted PON WA302307T1FAC - LSR ID (local service request ID) 7322890 to Qwest on 7/8/03 and requested a due date of 7/23/03 to install a DS1 capable loop
- Qwest sent Eschelon a LSRC (local service request confirmation) on 7/9/03 (11:39 PM). The LSRC contained
 1. Qwest order number N23717575
 2. Qwest's provided ECCKT (circuit ID) of **4HCFU185476PN**.
 3. Qwest confirmed Eschelon's requested due date of 7/23/03.
- Qwest sent Eschelon a jeopardy notice on 7/21/03 (6:07 PM). The jeopardy stated "Unavailability or lack of outside plant or buried service wire Outside plant includes all facilities - wire cable, terminals, carrier, cross connecting devices, etc " and the jeopardy notice contained no estimated due date.
- Qwest sent Eschelon a jeopardy notice on 7/22/03 (8:18 PM). The jeopardy stated "Unbundled only/RTT Issued" and the jeopardy notice contained no estimated due date.
- Eschelon contacted Qwest delayed order center on 7/23/03. Eschelon asked about the jeopardy notice Qwest sent on 7/22/03 Eschelon spoke with Michelle Bain at Qwest. Michelle said these notices are system generated and she could not provide additional information.
- The end user called Eschelon on 7/23/03 (1:57 PM local time) and told Eschelon that he spoke with an employee in Qwest's Engineering department. The Qwest employee told the end user that there was a T1 due today and there should be absolutely no problem putting a T1 at this address. The customer said that Qwest also said it could hook it up in three days if he wanted to go with Qwest. The end user then said he was going to check the demarc at his location The end user found a circuit at the demarc Eschelon asked the customer to read the information on the tag at the demarc.
- The customer called back on 7/23/03 (7:23 PM local time) and read the circuit ID. 4HCFU185476PN. This is the same circuit ID that Qwest provided for the DS1 capable loop on the LSRC sent to Eschelon on 7/9/03
- Eschelon dispatched a technician to the customer site to confirm the circuit was tagged on 7/24/03. It was.
- Eschelon's switch technician contacted James at the Qwest high cap test center and asked if he could test and accept the circuit James said that he was not responsible for this order but the responsible tester (due 7/23/03) should have contacted Eschelon's switch technician to advise that the T1 was held for facilities (service inquiry) and would be canceled and rejected and canceled back to Eschelon.

COMMENTS:

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH SECTION 271 OF THE
TELECOMMUNICATIONS ACT OF 1996

Docket No. T-00000A-97-0238

ESCHELON'S COMMENTS
REGARDING STAFF SECOND REPORT

Pursuant to the Procedural Order dated July 9, 2003 in this matter, Eschelon Telecom, Inc. ("Eschelon") submits these Comments regarding the Final Report and Recommendation on Checklist Items 1 and 2 ("Second Report") arising from the July 30-31, 2002 Workshop ("Workshop") by the Arizona Corporation Commission ("Commission" or "ACC") Utilities Division Staff ("Staff"). Eschelon appreciates the opportunity that the Commission and its Staff and facilitators have provided to Eschelon to present issues and participate in these proceedings.

I. INTRODUCTION

The Commission should adopt the recommendations of the Staff in the Second Report with respect to resolution of the impasse issues, with a few clarifications (discussed below). The Staff and facilitators have done a tremendous amount of work and analysis and have provided the Commission with a sound basis for adopting those recommendations.

To the extent that Qwest disagrees with the Staff's recommendations,¹⁶ Eschelon will address those issues in its Reply Comments. In these Comments, Eschelon will address a few issues needing clarification.

II. DISCUSSION

Because the issues are going directly to the Commission instead of an Administrative Law Judge ("ALJ"), this is the first time that the parties have had to provide feedback on the Second Report. Perhaps the Staff will address at least some of these issues in Reply Comments, so the Commission will have the benefit of the Staff's recommendations when considering this discussion. The following suggestions would provide needed clarity to help avoid later disputes.

A. Policy of Not Applying Rates in Interconnection Agreements

Eschelon has no objection to the application of Commission approved rates, and in fact, often attempts to persuade Qwest to apply such rates. The impasse issues relate to rates *not* approved by the Commission at all or as applied by Qwest. See Second Report, pp. 27-28, Issues K(1)-(3); see also Ex. E-9, pp. 18-22, Workshop Transcript ("Tr.") Vol. I, p. 219 line 7 – p. 222, line 25.

1. SGAT Rates

Staff states that the "rates included in the SGAT should reflect the ACC approved rates resulting from the latest wholesale pricing docket in Arizona." See Second Report, p. 28, ¶ 122; see also *id.* p. 38, ¶ 164. Qwest has included many rates in the SGAT that have not been approved by the Commission in a cost docket.¹⁷ Although Eschelon has not opted in to the SGAT, Qwest charges the unapproved SGAT rates anyway. See, e.g., Ex. E-9, pp. 20-22. Eschelon believes the Commission has addressed the handling of such rates in its cost case order.¹⁸ The Commission said:

The rates determined in this Decision are permanent. However, to the extent that issues are not addressed by the Decision, such issues are deferred to Phase III of the proceeding. For issues that

¹⁶ Although Eschelon does not agree with Staff on two of the fifteen impasse issues, Eschelon will withdraw its objections for purposes of a determination on 271 for these two issues rather than pursue those two issues here. See Second Report, p. 33 (¶ 140) and p. 46 (¶ 211).

¹⁷ For example, all of the rates in Qwest's Exhibit A to the SGAT that are accompanied by a footnote number "2" have not been approved by the Commission. Qwest states in footnote 2: "Rates for this element will be proposed in Arizona Cost Docket Phase III. (TELRIC). These rate may not reflect what will be proposed in Phase III. There may be additional elements designated for Phase III than what is reflected here."

¹⁸ *In re Investigation into Qwest Corporation's Compliance With Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts*, AZ Docket No. T-00000A-00-0194, Decision No. 64922 (June 12, 2002) ("Cost Order").

are deferred to Phase III, if the service is currently being offered, and the rates have previously been reviewed and approved by the Commission, the current rates will continue in effect until different rates are established in Phase III. These rates are not subject to refund, since they are the continuation of the existing rates previously approved by us. *For new services proposed by Qwest with a new rate that has not been reviewed and approved by the Commission, the interim rate shall be no more than the rate Qwest has proposed. Such "interim rates" shall be subject to a "true-up" and refund once permanent rates are established in Phase III.*"

See Cost Order, p. 81 (emphasis added). Staff states, "If the CLEC Interconnection Agreement does not include rates for the work or service requested, then Qwest can and should utilize SGAT rates, *as these are approved Commission rates*." See Second Report, p. 28, ¶ 122 (emphasis added). Use of the term "approved" in this sentence has created some confusion. To the extent that this means that the rates are "approved" as interim rates subject to true-up when there is not another rate, Eschelon agrees with Staff's recommendation and asks the Commission to adopt it.

Eschelon believes, based on the Commission's Cost Case Order, that any rate in the SGAT that has not been approved in a cost docket but is applied when there is no other rate is interim and subject to true up pursuant to this language. It also appears that Qwest is expected to provide cost support for its proposed rates and incorporate them in the SGAT. If this is not the case, Eschelon asks the Commission to so find.

2. Application of Rates: Current DS1 capable loop example

At the same time, such a ruling should not be a license for Qwest to begin to charge rates in an unintended, improper, or disruptive manner. It may be some time before any true-up pursuant to the Phase III cost docket occurs. In the meantime, for rates that eventually will be lowered, CLECs must bear the expense of funding those higher prices until a true-up refund is eventually received. With cash being tight in the current telecommunications environment, a true-up addresses some objections to unapproved rates but not all.

Improper application of rates is an issue of increasing concern as Qwest continues to expand and invent ways in which it unilaterally imposes charges on CLECs. The issues go beyond simple overcharging; they also impact provisioning. A recent example in Arizona, as well as other states, relates to DS1 capable loops. In June, 2003, Eschelon and other CLECs noticed a jump in the number of jeopardy notices for DS1 capable loops on the grounds of "service inquiry" for lack of qualified facilities (*i.e.*, held orders). The increase started to occur remarkably close in time to the date on which Qwest received Federal

Communications Commission ("FCC") 271 approval for Minnesota (June 26, 2003). In the short time from June 20, 2003 through July 15, 2003, Qwest sent 13 DS1 held order jeopardy notices for lack of facilities in Arizona to Eschelon. Qwest had sent only 3 DS1 service inquiry (no build) jeopardy notices for lack of facilities to Eschelon before that in 2003.¹⁹ Therefore, Qwest sent more than *four times* the number of these held order notices in the last 25 days than it did in the previous 170 days for Eschelon alone. To understand the impact of this to a small CLEC, the 13 DS1 held orders in Arizona represent approximately 208 to 312²⁰ Access Line Equivalents ("access lines"). Extrapolating from Qwest's recent performance results, this means that Qwest's policy is costing Eschelon, in Arizona, revenue from 8-12 additional access lines each day the policy is allowed to continue.²¹

Eschelon and other CLECs asked Qwest about the cause of this increase. Qwest has provided conflicting information, but has said generally that the increase in jeopardy notices relates to a recent decision by Qwest to start charging Individual Case Basis ("ICB") construction rates pursuant to its no-build policy for work that Qwest previously performed on a non-construction basis without charge. Qwest says that it will apply this policy and "construction" charges to activities such as line conditioning and reconditioning pairs. These are just standard steps that are taken routinely to locate facilities. They are part of the make ready work done to deliver a working facility. No true construction work is required. Qwest recovers its costs through the recurring and non-recurring rates approved by the Commission.

Qwest claims that it has been entitled to charge additional construction rates all along but only recently decided to start enforcing this policy. Qwest has also said that employees who were performing the work activities for which Qwest will now charge were out of process and should not have been doing so. Unfortunately, the information Qwest has provided about which work activities were performed but have been stopped and which activities will now result in charges has been sketchy and conflicting.²²

¹⁹ Jeopardy notices are sent for a large variety of reasons. Although Qwest has recently responded that the number of *total* jeopardy notices for June did not seem unusually high, the notices of concern relate specifically to service inquiry/no build.

²⁰ The range varies depending on whether the assumption of 16 or 24 is used.

²¹ This is for the current policy change only. As discussed below, Qwest has said it is implementing an additional change to the construction policy as well.

²² Eschelon has asked Qwest to provide the text of the Multi-Channel Communicators ("MCCs") that Qwest distributed to its employees to explain these changes, but Qwest refused to provide that information. Any direction given to Qwest's employees about activities that they should not perform, which they had previously been performing would provide needed information to CLECs and the Commission about whether such activities should be performed and whether they are already included in an approved rate.

Despite the lack of detail, Qwest has clearly implemented this change. The change manifested itself to CLECs in June with the increase in held order jeopardy notices for service inquiry (no build). In addition, on July 3, 2003, Qwest confirmed in an email that a change in "charging" had occurred. After Eschelon asked Qwest to provide a copy of any notice of its change to CLECs, Qwest distributed a new Level 3 notice through CMP to CLECs regarding a change to its no-build construction ("CRUNEC") policy.²³ In that notice, Qwest creates a new rate element (which does not appear in the SGAT) entitled "Quote Preparation Fee for Simple Facility Rearrangements ("QPFS")"²⁴ Qwest has unilaterally created a new rate element and assigned it a rate, with no negotiations and no submission to a cost docket.

In CMP, it does not matter if every CLEC strenuously objects to a change. Qwest often simply denies the CLEC comments. Qwest unilaterally implements the change after the notice period, despite CLEC objection. In this case, the time period for CLECs to comment on the "proposed" change in this CMP notice has not yet expired, even though indications were that Qwest has already implemented changes based on the revised policy.

Eschelon asked Qwest about the timing of the notice (apparently after the change had occurred). This morning, Qwest responded by email that the changes to date have occurred pursuant to an earlier no-build CRUNEC notice that went into effect on June 16, 2003 (over CLEC objection). Qwest said that there is *another change* in progress and that is different from this one. It appears CLECs can expect even more orders to go held for "construction" of facilities in situations in which, previously, Qwest performed these activities as part of the routine make ready work needed to locate compatible facilities.

Until then, according to Qwest, the changes to date relate to the previous no-build CRUNEC notice. In that notice, Qwest made a *one word* change²⁵ that has led to the disruption of order processing and increase in number of service inquiry jeopardy notices that has prevented Eschelon from serving these

Qwest could provide this information on a confidential basis, if the information is confidential. Simply because it is "internal," however, does not necessarily mean that it is confidential. After all, the result of the change has directly affected CLECs, who do not fully understand what has changed.

²³ See PROD 07.11.03.F.03468 UNECRUNEC_V5.0 (sent July 11, 2003; effective Aug. 25, 2003).

²⁴ Ironically, Qwest will likely argue that it is providing a benefit to CLECs by creating a "simpler" and presumably less expensive alternative than the QPF. The relative comparison, however, is to the charge of \$0.00 that Qwest has been applying. It is also necessary to know whether the costs are included in other charges that have been approved by the Commission. Qwest should not be able to apply a charge because it has merely created a new name ("facility reassignments") for an existing activity. Also, although the QPF will potentially be lower, the same lengthy time frames apply under the allegedly "simpler" process.

²⁵ See PROS.04.30.03.F.01071.CRUNEC. The only other change was in capitalization of one word.

customers as their carrier of choice. The single word that changed in Qwest's notice was the deletion of the word "conditioning" from the definition of "incremental facility work" in the exceptions to the CRUNEC process. By deleting the exception, Qwest made "conditioning" subject to the construction policy. In other words, now that Qwest has 271 approval in virtually all of its states, it considers "conditioning" to be a build. No plow to the ground (or any remotely similar construction) but CLECs pay for a build and experience all associated delays.

This is directly contrary to the language of the Qwest-Eschelon ICA in Arizona. Attachment 1 (Rates and Charges) contains two separate sections, one for construction and another for conditioning. See ICA, Att. 1, ¶ 3.1 & ¶ 4.1. Conditioning is not a sub-section under construction. See *id.* Clearly, conditioning is not "construction" under the ICA. In CMP, Qwest agreed to the following language in its governing CMP document.

In cases of conflict between the changes implemented through this CMP and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement. In addition, if changes implemented through this CMP do not necessarily present a direct conflict with a CLEC interconnection agreement, but would abridge or expand the rights of a party to such agreement, the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such agreement.²⁶

This paper promise has meant nothing in this situation. Qwest has already implemented its change as to Eschelon's orders.

Similarly, Qwest's change in its construction policy is contrary to Qwest's commitments in the Arizona 271 proceeding. The SGAT was developed in the 271 proceedings. The Arizona SGAT provides.

9.1.2.1.2 If cable capacity is available, Qwest will complete **incremental facility work** (i.e., **conditioning**, place a drop, add a network interface device, card existing subscriber Loop carrier systems at the Central Office and Remote Terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.

Although "conditioning" appears here in the SGAT, Qwest has unilaterally deleted it from its definition of incremental facility work. The FCC relied on the SGAT language in previous 271 proceedings. In paragraph 164 of the FCC's 9-state Qwest 271 Order (Docket No. 02-314; Dec. 20, 2002), the FCC said. "The record shows that Qwest attempts to locate compatible facilities for competing LECs," and it shows that Qwest "performs incremental facility work to make UNEs available." In footnote 617, the FCC quotes section 9.1.2.1.2 of Qwest's SGAT (which is identical to the AZ SGAT section of the same number, quoted above). In the SGAT, incremental facility work, including conditioning, is performed at no additional

²⁶ CMP Document, Section 1.0; see <http://qwest.com/wholesale/downloads/2003/030717/QwestWhslChgMgtDoc061803.doc>

charge.²⁷ Under Qwest's revised policy, a fee is required just to obtain a QPF for conditioning, plus there will be additional construction charges if the order proceeds.

Ms. Dubuque of Qwest told Eschelon in an email today that, for the held orders that Eschelon had asked Qwest to review as to this issue, Eschelon must select one of the following options: "cancel, order Private Line, use CRUNEC process." Eschelon has ordered private lines for most of these orders. After its communications with Eschelon on this issue, Qwest is obviously aware that it would have to address the issue of why the facilities were available for private lines but not DSI capable loops, if it processed these orders. Unlike private lines ordered from the retail tariff in the past (when Qwest was not processing EEL orders), Qwest is now sending jeopardy notices for private lines to Eschelon.

Initially, when Qwest told Eschelon that it was implementing additional charges for DSI capable loop orders, Eschelon believed that this change may result in a dispute about the applicability of non-recurring charges. It also believed that, because Qwest said the issue related to charges, at least the orders would start to flow again and the number of jeopardy notices would return to previous levels. In that scenario, the Commission's order on interim rates would have at least allowed Eschelon to attempt to obtain a refund if the Commission ultimately disagreed with Qwest about the applicability of the charges. The effect of Qwest's unilateral change is much worse, however.

Qwest is not simply charging a non-recurring charge -- the applicability of which CLECs may dispute (although it may also do that as well, after application of CRUNEC). But rather, Qwest is also claiming that work activity it previously performed at no charge to locate compatible facilities is "construction" of facilities. It has said that it will charge an ICB rate, so CLECs cannot even plan for these new costs. By invoking its twice revised no-build CRUNEC policy, Qwest is requiring CLECs to not only pay an up-front quote preparation fee ("QPF") but also to experience a *delay of almost a month or more* just to get the quote and estimated ready for service date.²⁸ When all of the CRUNEC steps are completed,

²⁷ In an email dated July 11, 2003, Toni Dubuque of Qwest told Eschelon in an email that: "The other question that came up in our discussion is one on incremental facilities as stated below in 9.1.2.1.2. If the facility (DSI capable loop) is available, we would do the incremental facility work per the SGAT at no additional cost." Nonetheless, in an email today, Ms. Dubuque quoted the CRUNEC process in which the word "conditioning" was deleted from the incremental facility work description.

²⁸ Qwest has not explained why it needs approximately a month of time for this when Qwest will have had to identify the problem to send the no facilities jeopardy notice. Qwest provides such notices when no compatible facilities are available. Presumably, Qwest checks for compatible facilities before making this

60 or 90 days could easily elapse.²⁹ Customers are not tolerant of such delays. The delay is unnecessary for this type of work, and it places CLECs at a competitive disadvantage. The expense and delay really mean that the only alternative for CLECs will often be to cancel the orders, if the customer does not request cancellation first. Qwest has not shown that it charges Retail customers for comparable work, as is required under the ICA and SGAT.³⁰

Qwest is attempting to apply charges meant for true builds to the type of make ready work that is done routinely to locate compatible facilities. The Commission should address the process by which Qwest has unilaterally implemented this transformation. Qwest has said that it believes the rates (including "ICB" rates)³¹ are commission approved rates. This suggests that Qwest will not agree to refund any fees pursuant to a true-up, even assuming the Commission later disagrees with Qwest's application of the rates, unless the Commission indicates otherwise.

Even assuming that these charges are interim and subject to true-up, the delays and obstacles associated with the no-build CRUNEC policy are a problem. Qwest has effectively shut down these orders. Eschelon has already lost customers in a short period of time as a result of this issue. Eschelon asks the Commission to require Qwest to suspend the changes it has made (and is making pursuant to the revised policy) until Qwest brings those changes and associated rates to the Commission and obtains approval.

B. Availability of Features With UNE-P.

Staff addressed the availability of certain features with UNE-P and agreed with Eschelon's position that these features should be made available with UNE-P. *See* Second Report, p. 10, ¶¶ 40-42

representation. In confirming this information, Qwest would have the information it needs for the construction quote before the 20 day quote period even commences.

²⁹ In addition, in the past, Qwest has said that Eschelon needs an interconnection agreement ("ICA") amendment to invoke this process, even though its current ICA addresses construction of facilities. Improper insistence on unnecessary contract amendments to cause delay and impose unwanted terms is one of the first issues that Eschelon raised in this 271 proceeding (in its filing on Sept. 21, 2000), and this issue remains a problem.

³⁰ *See* SGAT ¶ 9.19, ICA Att. 1, ¶ 3.1.

³¹ In Minnesota, the ALJ recommended "If a CLEC requests an element that is on Qwest's SGAT as ICB and has not been approved as such by the Commission, Qwest should either develop a cost-based price or substantiate the need for ICB pricing, and file it with the Commission for review within 60 days of offering the price to a CLEC in Minnesota." Findings of Fact, Conclusions of Law, and Recommendation, *In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element (UNE) Prices*, Minnesota Office Of Administrative Hearings, OAH Docket No. 12-2500-14490-2; PUC Docket No. P-421/C1-01-1375 (Aug. 2, 2002), ¶ 226 ("Minnesota ALJ Report"), *see also* Order Setting Prices and Establishing Procedural Schedule, PUC Docket No. P-421/C1-01-1375 (Oct. 2, 2002) (reconsideration motion denied Nov. 26, 2002).

This is an important issue. By allegedly moving features that would otherwise be available to CLECs through UNE-P to the Advanced Intelligent Network (“AIN”) platform, for example, Qwest has avoided the obligation to provide these features to CLECs while providing the features to its own Retail customers. Adopting Staff’s recommendation will help cure that disparity.

A sub-issue that arises during the Staff’s discussion of feature availability requires clarification. The facts have changed since Qwest provided information to the Staff, although it appears that Qwest did not update its information with Staff. Qwest committed to update information on its web site but instead has deleted it. Qwest should be required to place the updated information on its web site in a readily accessible location.

Eschelon raised this issue during the Workshop because ease of access to information about feature availability, while less critical than the access itself, is important. To develop, market, and order a product, CLECs need to know which features are and are not available with a product, as well as the Universal Service Ordering Codes (“USOCs”) for those features. Eschelon has relayed examples of how Eschelon had attempted to order features with UNE-P only to either have the orders rejected or, worse yet, to have the features dropped during order processing without Eschelon’s knowledge. In the latter situations, Eschelon learned about the feature problems only when the end user customer complained. These problems occurred because Qwest’s documentation for

CLECs was unclear as to feature availability with UNE-P.³² Eschelon pointed out that, although Qwest had added a list of features that were unavailable with UNE-P to its website after Eschelon complained about this issue, the list was incomplete and difficult to find on Qwest's website. *See, e.g.,* Tr Vol. II, p. 442, line 15 – p 444, line 17, *see also* Ex E-1, pp 3-4 Other CLECs have actually asked Eschelon to forward the document to them when they could not find it either Eschelon asked Qwest to add a link to the website in the relevant sections to make it easier to find the document entitled “Features, Products & Services Unavailable with UNE-P Products” *See* Tr Vol II, p 442 line 16 – p 443, line 16

The Staff points to the ready availability of this information in its Second Report, based on information provided to it by Qwest The Staff states:

Qwest described its UNE-P product catalogs (“PCATS”) and stated that in the general information PCAT, Qwest includes a list of the features that are unavailable with UNE-P, including AIN products, voice messaging products, feature products, etc. The features are provided by USOC, and there is a language description for each one

See Second Report, p 7, ¶ 32. The Staff also quotes from Qwest's Late-Filed Exhibit A, in which Qwest specifically commits to revise the “Optional Features section of the PCAT” to update “the downloadable ‘USOCs Not Available with UNE-P’ (Features Unavailable with UNE-P)” document *See id.* p. 9, ¶ 36. Qwest represented to the Commission that it had completed these updates on August 27, 2002. *See id.* ¶ 37

Since the Workshop, however, Qwest has *deleted this document from its PCAT*³³ If Qwest sent a notice stating that it deleted the document, Eschelon cannot find it.³⁴ Qwest has taken the opposite action from the one requested by Eschelon and described by Qwest in the Late Filed Exhibit relied upon by Staff. As indicated, CLECs need this information to plan, market, and order UNE-P Also, Qwest should be held to its commitment to provide and update the information on its web site³⁵

³² For example, McLeod recently discussed another example of this in CMP. McLeod opened a ticket (#157043) to ask Qwest to correct the features available with UNE-P list because it had a feature (USOC GVT) on it that really was not available with UNE-P.

³³ The document was available at <http://www.qwest.com/wholesale/pcat/une-p.html> *See* Ex. E-1, p 4, note 4; *see also* Tr. Vol. II, p. 442 line 16 – p. 443, line 16. Now, at the same URL, Qwest merely describes very generally that “Some products and services are not available with UNE-P including” listed categories of features. Although Qwest represented that the “features are provided by USOC, and there is a language description of each one” (*see* Second Report, p. 7, ¶ 32), Qwest has deleted that necessary detail.

³⁴ Qwest committed to the Staff that, for such PCAT changes, it would “funnel that through the CMP process.” *See* Second Report, p 7, ¶ 32

³⁵ If Qwest has moved the documentation to a more difficult location that Eschelon could not find after searching diligently, Eschelon has given Qwest every opportunity to correct Eschelon's understanding that

While this may seem like a small issue and, in fact is less important than the main issue on which the Staff made its recommendation regarding availability of features, the devil is often in the details. Preparing and provisioning a product for end user customers is a detail intensive process. While a product may be available in theory, the documentation and processes at the detail level need to be in place to make that availability a reality

Eschelon asks the Commission to adopt the Staff's recommendation on availability of features and to further require Qwest to post a complete "Features, Products & Services Unavailable with UNE-P Products" (with USOCs and language description) document, as modified to reflect the Commission's decision,³⁶ in a logical and readily accessible location on Qwest's web site.

C. Training

The Staff recommends that the Commission require Qwest to take certain steps to ensure its employees are trained in proper processes. *See* Second Report, p. 12, ¶¶ 50-51. Eschelon supports this recommendation. Part of the Staff's recommendation is to require Qwest to send out relationship management surveys to CLECs annually "as part of the CMP [Change Management Process] process." *Id.* ¶ 51. Some Eschelon employees have received calls regarding a Qwest survey about Qwest, but the survey was not discussed in CMP. To Eschelon's knowledge CLECs had no input into the survey questions or the list of CLEC employees to be contacted. A perfunctory survey that does not address key issues will not serve the purposes of the survey stated by the Staff. CLEC involvement in the process is needed to help ensure its relevance to issues of importance to CLECs. Eschelon asks that the Commission adopt this recommendation and, when doing so, clarify that the Staff's reference to CMP is meant to ensure CLEC participation in the survey process (and not just receipt of notice, if any) through CMP.

D. Unannounced Dispatches

Qwest deleted the document from the PCAT after the Workshop. On at least three occasions, Eschelon's Local Service Product Manager asked Qwest's Senior Service Manager to address this issue. In an email dated May 28, 2003, she said to Qwest: "I am attempting to locate the ineligible USOC list for UNE-P that used to be on your wholesale website and I'm unable to locate it. Has it been removed or just moved to a different section? If it was removed, was there notification sent out indicating that you were eliminating it from your site?" She sent follow up email requests asking Qwest when she would receive a response on May 30, 2003 and June 9, 2003. Qwest chose not to respond. Perhaps the Commission can obtain this information.

Staff agreed with Eschelon that Qwest should make available to CLECs a published, documented process for non-emergency maintenance visits to CLEC end-user premises. *See* Second Report, p. 15, ¶ 63. Staff indicated that Qwest provided a matrix describing the process and posted it on the website. *Id.* A minor adjustment by Qwest would better accommodate the needs of CLECs. As indicated in the Second Report, the matrix was added to the Qwest web site under the “general heading of Qwest Wholesale CLEC Ad Hoc Meetings.” *Id.* A CLEC representative searching for Qwest’s policy on notification of dispatches, however, would have no reason to search under “Ad Hoc” meetings, particularly if that particular representative did not attend the ad hoc meeting held in 2002. The Commission should require Qwest to add links, in the relevant portions of the PCAT (such as Maintenance & Repair), directing users to this document, so that CLECs may find it.

In addition to the notice issue for non-emergency visits, Qwest addressed a process change that it says it implemented on July 23, 2002 to prevent unnecessary dispatches on UNE-P orders. *See* Second Report, p. 15 ¶ 61.³⁷ Qwest said that it fixed the problem. In two consecutive days this week, however, Eschelon has experienced two more examples of this problem. Eschelon has reported the examples to its Qwest Service Manager and is waiting for a root cause analysis. The examples occurred in Colorado and Minnesota. Eschelon does not object to closing this impasse issue, with the minor modification to the web site suggested in the previous paragraph, for purposes of this proceeding. If examples continue to occur and occur in Arizona, however, Eschelon may need to raise this issue again with the Commission.

E. Maintenance and Repair – Reciprocity

The Staff addressed reciprocity with respect to initial trouble isolation charges in the Second Report. *See* Second Report, p. 26, ¶ 113. Eschelon asks the Commission to recognize that the Staff’s recommendation applies to only charges related to initial testing and that charges for subsequent testing due to Qwest error (described in the next paragraph) have not been addressed by this ruling. Charges related to subsequent testing may be addressed elsewhere, such as the upcoming cost case or interconnection agreement negotiations or arbitrations.

³⁶ Although the documentation needs updating, availability of the features themselves need *not* be delayed while that process takes place. When Qwest chose to provide voice mail and AIN features with a platform product in the past, for example, Qwest did not require any CMP process before providing those features.

³⁷ The Qwest matrix (referred to in ¶ 63 of the Second Report) does not address such unnecessary Qwest dispatches that occur during the provisioning of a Local Service Request (“LSR”).

The section of the Statement of Generally Available Terms (“SGAT”) on Trouble Isolation (12.3.4) does not address an area of primary concern to Eschelon. Eschelon does its own trouble isolation testing routinely. The reciprocity problem that still needs to be addressed, however, is how to handle the situation in which Qwest gets it wrong. In this scenario, the CLEC conducts the test and finds the trouble is not in its network. Then, Qwest disagrees. Therefore, the CLEC must take the additional step of dispatching a technician for the purpose of determining whether Qwest is correct in denying the CLEC’s test results. If the CLEC proves that the trouble is, in fact, in Qwest’s network, the CLEC should be able to charge Qwest for this dispatch. Qwest will charge CLECs in the same situation, so CLECs should be able to charge Qwest. Because Section 12.3.4 of the SGAT does not address this scenario, it does not preclude this result. The Commission should not foreclose more review of this issue with its ruling in this 271 case.

F. Loss and Completion Reports

Staff agreed with Eschelon that Qwest should notify CLECs when customers are lost. *See* Second Report, p. 27, ¶ 117. Qwest provided an update to Staff on the changes in CMP that address this issue. *Id.* ¶ 118. Since then, Eschelon has asked Qwest to re-open its Change Request (“CR”) on the accuracy and completeness of loss reports due to an increase in the number of problems that are created by insufficient loss and completion reports. Customers call to complain when they receive bills both from Eschelon and their new resale or UNE-P provider. Eschelon has no way of knowing that the customer has left, however, if the loss report is inaccurate. Qwest did not agree to re-open the CR but did open an action item to address these issues. The Staff recommends that the loss and completion report issues be handled in the CMP process. *See* Second Report, p. 27, ¶ 117. Based on the information provided by Qwest, however, Staff refers to a specific CR number. *Id.* ¶ 118. This issue should not be viewed as being wholly addressed by that single CR, because other loss report issues are pending.

The Commission should adopt the Staff’s recommendation that “Additional changes to the Loss and Completion Report that Eschelon is requesting should be handled by the CMP process. . . .” In addition, as Staff has recommended for some of the CMP issues, the Commission should require Qwest (for all of the issues referred to CMP) to advise the Commission when the process is agreed upon and implemented. *See, e.g.*, Second Report, p. 21, ¶ 86.

G. Maintenance and Repair –Untimeliness of Bills

In response to CLEC complaints about untimely bills, Qwest stated that “bills are not issued on maintenance charges that are over 45 days old.” See Staff Report, p 22, ¶ 91 (quoting Notarianni & Doherty Checklist Item 2 OSS Reply Declaration, ¶ 238 (July 26, 2002)). The Staff recommends that the Commission require Qwest to document its policy and post it on Qwest’s web site so that it is applied uniformly See Staff Report, p 22, ¶ 92. Eschelon supports this recommendation.

In addition, Eschelon asks the Commission to clarify the meaning of Qwest’s statement so that the documented process actually addresses the problem of untimely bills. Eschelon was initially heartened by this promise by Qwest. Since then, Eschelon has learned from Qwest that Qwest interprets the language differently. When Eschelon has disputed maintenance charges that are more than 45 days old, Qwest has claimed that the charges are valid. Qwest says that the quoted language above means simply that Qwest will not *write an order* to generate billing more than 45 days after the maintenance activity takes place, not that it will not bill for a repair that took place more than 45 days ago. Anyone who has read that language may ask themselves whether, when reading it, this was apparent to them. To Eschelon, this interpretation defies the plain meaning of the words used in Qwest’s sworn testimony.

The issue raised by Eschelon was timeliness of bills. Untimely information makes verifying bills very difficult. See Second Report, p 21 ¶ 88. Under Qwest’s recent interpretation of this language, the following scenario may occur, according to Qwest.

- 7/1 Tech dispatch (repair activity occurs)
- 8/14 Monthly bill date – no bill sent, because Qwest paperwork not done
- 8/15 Qwest issues record order on repair internally at Qwest (within 45 days)
- 9/14 Qwest bills CLEC on monthly bill (75 days after repair)

Qwest claims that a bill sent 75 days after the repair date falls within the policy in its sworn testimony and is timely. Eschelon has found, however, that verifying a bill 75 days after the event is very difficult, if it can be done. Qwest’s interpretation should be rejected as not meeting the expectation set by the plain language of its sworn testimony and as inconsistent with the purpose of requiring timely billing. The Commission should adopt the Staff’s recommendation, with the clarification that the bills will be sent to the CLECs within 45 days of the repair date.

III. CONCLUSION

The Commission should adopt the recommendations of the Staff in the Second Report with respect to resolution of the impasse issues, with the clarifications discussed here. With respect to compliance with 271, several of the items require follow up action. Qwest should complete those actions and verify compliance before obtaining 271 approval.

July 18, 2003

ESCHELON TELECOM, INC.

By:

Karen L. Clauson
Eschelon Telecom, Inc.
730 2nd Avenue South, Suite 1200
Minneapolis, MN 55402-2456
(612) 436-6026